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EXAMINER
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/735,405
Filing Date: December 12, 2003
Appellant(s): PARKER, JANE SMITH

Bruce H. Bernstein
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 22 October 2008 appealing from the Office

action mailed 25 January 2008.

(1) REAL PARTY IN INTEREST

The real part in interest is AT&T Intellectual Property I, L.P. (formerly known as AT&T Knowledge Ventures, L.P. (formerly known as SBC Knowledge Ventures, L.P. as established by a Change of Name recorded in the U.S. Patent and Trademark Office on March 13, 2006, at Reel 017652 and Frame 0775)).

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct with particular emphasis made to the following:

Regarding independent Claim 1:　The system claim is directed to <u>logic</u> (Applicant's Specification, paragraphs [0052-0054]) **"configured to".**

Regarding independent Claim 17: The applicant claims a "payroll system" stored on computer-readable medium, the system comprising:　computer-readable code.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows.

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8-16 are rejected under 35 U.S.C. § 101. Based on Supreme Court precedent and recent Federal Circuit decisions, a 35 U.S.C § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would <u>not</u> qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the particular machine to which it is tied, for

example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps are not tied to a particular machine and do not perform a transformation. Thus, the claims are non-statutory.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. *Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.*

Claims 1-7 are rejected under 35 USC 101. The system claims are directed toward only logic. The logic is software per se which does not fall within one of the four statutory classes.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,490,350 B2	McDuff et al.	12-2002
2001/0032120 A1	Stuart et al.	10-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

NEW GROUND(S) OF REJECTION

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Claims 1-7 are rejected under 35 USC 101. The system claims are directed toward only logic. The logic is software per se which does not fall within one of the four statutory classes.

Claim Rejections - 35 USC § 103

1.   **Claims 1, 3-15, 17 and 19-22** are rejected under 35 U.S.C. 103(a) as being unpatentable over McDuff et al., US Patent 6,490,350 B2.

Claims 1, 3, 7, 8, 9, 14-15, 17, and 19:

With regard to the limitations:

- *Obtaining and using a set of switching statistics from a communication switch database to determine the quantity related performance of an operator;*

- *Obtain a set of work statistics to determine the quality related performance of an operator;*

McDuff et al. in at least Column 1, lines 33-42, lines 60-67 and Column 2, lines 1-8 discloses a computerized monitoring system for monitoring telephony resources, gathering raw data from the switching mechanism in a call center; with the ability to gather status information and statistics regarding the calling activity of agents within the call center. Therefore, it would be obvious, at the time of the invention, to a person of ordinary skill in the art to determine that McDuff et al. produces statistics equivalent to applicant's invention.

McDuff et al. does not specifically disclose the following limitations per se:

- ***Determine an operator efficiency parameter by integrating switching and work statistics;***

- ***Determine when operator efficiency parameter exceeds an expected efficiency parameter.***

However McDuff et al. in at least Column 3, lines 5-8 discloses gathering statistics regarding agent calling activity and in at least Column 3, lines 18-26 further discloses some of the information regarding an agent's average handling time, average work time, average talk time, etc. McDuff, et al. in at least Column 3, lines 27-33 still further discloses that the monitoring server provides an automated way to gather useful statistics, classify the statistical data and generate reports useful for a supervisor or other manager. Therefore, it would be obvious, at the time of the invention, to a person of ordinary skill in the art to conclude that McDuff et al. collects and manipulates statistical call center agent work related information and

produces reports useful to a supervisor and manager to manage the personnel related activities of a call center.

Claims 4-6, 10-13, and 20-22:

With regard to the limitations:

- Communication switch statistics are from a POTS;
- Operator quality parameters are for telephone calls from customers;
- Operators may be of any job grade level.

McDuff et al. in at least Fig. 1, Column 3, lines 35-65 discloses a portion of a telecommunications network of a call center connected to a public switched telephone network (PSTN) and in at least Column 4, lines 17-22 and Fig. 1 further discloses that the call/telephony integrated monitoring server is connected to an automated resource management system (ARMS). McDuff et al. in at least Column 3, lines 27-33 further discloses some of the operator quality and quantity parameters related to telephone calls from customers and for business clients that are collected. McDuff et al, in at least Column 5, lines 63-67 still further discloses that statistics may be for agents, supervisors, business clients, and call status encompassing the whole of the call center operation. Therefore, it would be obvious at the time of the invention, to a person of ordinary skill in the art to acknowledge that a PSTN is sometimes referred to as the Plain Old Telephone Service (POTS) and that the operator related statistics in a call center are relative operators regardless of their

grade level and that McDuff et al. fully discloses all the limitations of the applicant's invention.

2.   **Claims 2, 16 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over McDuff et al. as applied to **claims 1, 3-17 and 19-22** above, and further in view of Stuart et al., US Publication 2001/0032120 A1.

Claims 2, 16 and 18:

McDuff et al. does not specifically disclose the following limitations:

- *Bonus payment to an operator;*

However, Stuart et al. in at least Paragraph [0009] discloses a system for evaluating call agent efficiency and the agent cost data and determining a cost based performance indicator. Stuart et al. in at least Paragraph [0054] discloses that the evaluation of a call agent's efficiency could enable management to introduce a valid 'pay for performance' system. Therefore, it would be obvious, to a person of ordinary skill in the art to ascertain that a 'pay for performance' system encompasses a bonus payment and that a call center owner would be motivated to modify McDuff et al.'s monitoring statistics with Stuart et al.'s call agent productivity and reward system to minimize lost productivity (Stuart et al., Paragraph [0006]).

(10) Response to Argument

(10a) Claims 1, 3-15, 17 and 19-22.

Claims 1, 3-15, 17 and 19-22 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over McDuff, US 6,490,350 B2. The following is a table of all the limitations in Claim 1 and where these limitations are found in the references.

CLAIMS 1, 3, 7-9, 14-15, 17 AND 19		
CLAIM LIMITATIONS	**McDUFF**	**STUART**
Logic configured to obtain a set of switching statistics from a communication switch database to determine the quantity related performance of an operator;	Discloses a computerized monitoring system for monitoring telephony resources, gathering raw data from the switching mechanism in a call center; with the ability to gather status information and statistics regarding the calling activity of agents within the call center. (See at least Column 1,	
Logic configured to obtain a set of work statistics of an operator to determine the quality related performance of an operator;	lines 33-42 and Column 2, lines 1-8).	
Logic configured to determine an operator efficiency parameter by integrating switching and work statistics.	Discloses gathering statistics regarding agent calling activity (see at least Column 3, lines 5-8). Discloses information regarding an agent's	

| Logic configured to determine when the operator efficiency parameter exceeds an expected efficiency parameter. | handling time, average work time, average talk time, etc. (See at least Column 3, lines 18-26).

Discloses that the monitoring server provides an automated way to gather useful statistics, classify statistical data and generate reports useful for a supervisor or other manager. (See at least Column 3, lines 27-33). | |

With regard to independent claims 1, 8 and 17, Applicant argues "MCDUFF does not disclose, suggest, or render obvious these features for at least the reasons", "MCDUFF fails to disclose the specific function of integrating the switching statistics with the work statistics to determine an operator efficiency parameter as recited by the claims. To the contrary, MCDUFF merely discloses gathering the switching statistics and the work statistics and displaying the switching statistics and the work statistics independently of one another in a GUI. According to MCDUFF, the state change information and the work statistics are gathered and displayed in a logical organization (MCDUFF, Figs. 13-20), however the state change information and the work statistics are not integrated in any manner whatsoever."

The Applicant further argues "However, the Official Actions allege that the above-recited feature is obvious because MCDUFF discloses (1) gathering switch statistics; (2)

gathering work statistics; and (3) generating a report displaying the statistics to help monitor a telecommunications system. Appellant respectfully disagrees with such an allegation of obviousness, as MCDUFF discloses nothing more than presenting statistics in a GUI."

The Applicant further argues that MCDUFF never alludes to an Operator efficiency level. Applicant further argues that the Examiner is relying upon impermissible hindsight by relying upon the disclosed advantages of the claims 1, 8, and 17, as provided in Appellant's own specification, as a roadmap for determining obviousness in light of MCDUFF.

Respectfully, the Examiner disagrees with Appellant regarding MCDUFF on Item (3) above MCDUFF is providing reports and formats that are useful to a supervisor (McDuff, Column 3, lines 27-33) and displaying the statistics to help monitor a telecommunications system.

The Examiner did not fall victim to the use of hindsight, as anyone with ordinary skill in the art would use the collected switch and work statistics to measure the performance of operators in a call center.

Furthermore, MCDUFF collects the switch and work statistics and presents them in a manner which is useful to a supervisor to determine a wide variety of performance metrics (statistics) for monitoring the performance of a telecommunications system. Therefore, Claims 1, 8 and 17 are properly rejected.

Regarding the Dependent Claims 3-7, 9-15 and 19-22, Applicant argues that "The rejection of dependent claims 3-7, 9-15, and 19-22 under 35 U.S.C. § 103(a) as

unpatentable over MCDUFF is in error, and the decision of the Examiner to reject these claims should be reversed." As "Claims 3-7, 9-15, and 19-22 are each directly or indirectly dependent upon one of independent claims 1, 8, and 17 and include the subject matter recited therein."

The Examiner has demonstrated in the table above the rejection of Claims 3, 7-9, 14-15 and 19. Claims 4-6, 10-13, and 20-22 are rejected as shown in the table below.

CLAIMS 4-6, 10-13, AND 20-22		
CLAIMS LIMITATIONS	**MCDUFF**	**STUART**
Communication switch statistics are from a POTS switch;	McDuff in at least Fig.1 and Column 3, lines 35-65 discloses a portion of a telecommunications network of a call center connected to a public switched telephone network (PSTN also commonly known as POTS).	
Operator quality parameters are for telephone calls from customers; Operators may be of any job grade level.	McDuff in at least Fig.1 and Column 4, lines 17-22 discloses that the call/telephony integrated monitoring server is connected to an automated resource management system (ARMS). McDuff in at least Column 3, lines 27-33 discloses some of the operator quality and quantity parameters that are collected related to telephone calls from customers and for business clients. It would have been	

| | obvious, at the time of the invention, to one of ordinary skill in the art that the operator related statistics in a call center are relative to the operators regardless of their grade level. | |

(10b) Claims 2, 16, and 18

Applicant argues that "The rejection of claims 2, 16 and 18 under 35 U.S.C. § 103(a) as unpatentable over MCDUFF in view of STUART is in error, and the decision of the Examiner to reject these claims should be reversed. Claims 2, 16 and 18 are each directly or indirectly dependent upon one of independent claims 1, 8 and 17 and include the subject matter recited therein. Appellant has noted above the reasons why MCDUFF does not render obvious independent claims 1, 8 and 17." Applicant further argues "Specifically, STUART does not teach or render obvious integrating a set of switching statistics and a set of working statistics to determine an operator efficiency parameter or determining when the operator efficiency parameter exceeds an expected efficiency parameter.

The Examiner disagrees, MCDUFF collects switching and working statistics and provides the data in a format that is useful for a supervisor to monitor the performance of a telecommunications center (call center). One of ordinary skill is used to make an obviousness rejection that MCDUFF's collecting and use of switching and working statistics to monitor the performance of a telecommunications center (call center) would include all personnel related activities. The combination of MCDUFF and STUART is

used to evaluate call agent efficiency and to determine a cost based performance
indicator as disclosed in the table below.

CLAIMS 2, 16 AND 18		
CLAIM LIMITATIONS	**MCDUFF**	**STUART**
Bonus payment to an operator.		Stuart in at least Paragraph [0009] discloses a system for evaluating call agent efficiency and the agent cost data and determining a cost based performance indicator. Stuart in at least Paragraph [0054] discloses that the evaluation of a call agent's efficiency could enable management to introduce a valid 'pay for performance' system. It would be obvious, to one of ordinary skill in the art to modify McDuff's monitoring statistics with Stuart's call agent productivity and

		reward system to minimize lost productivity (Stuart, Paragraph [0006]).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR